IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/06/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

SECOND APPEAL NO.1834 OF 1991.

T.Perumal ... Appellant

-Vs-

R.Nesammal ... Respondent

Second Appeal preferred under Section 100 C.P.C. for the relief as stated therein.

!For appellant : Mr.N.Rajan

^For respondent : Mr.M.Murali

:JUDGMENT

The above second appeal is directed against the judgment and decree dated 27.6.1991 rendered in A.S.No.57 of 1990 by the Court of District Judge, Nagercoil thereby confirming the judgment and decree dated 29.10.1986 rendered in O.S.No.256 of 1985 by the Court of Principal District Munsif, Padmanabhapuram.

2. Plaintiff is the appellant herein. He filed the suit in O.S.No.256 of 1985 before the trial Court against his wife, the respondent herein, for a declaration that the plaintiff and the defendant are not husband and wife and for an injunction restraining the defendant from claiming any right against the plaintiff as his wife on averments such as that he is a born Hindu and he is professing Hindu religion all along; that the defendant is a Christian belonging to C.S.I. Church; that it was misrepresented to him that the defendant is a Hindu as a result of which the marriage between himself and the defendant was solemnised on 29.10.1982 at the residence of the defendant at Kamplar, Manakarai in accordance with Hindu ceremonies and subsequent to the marriage, he came to know that the defendant is a Christian.

3. The plaintiff would further submit that a marriage under Hindu Law with Hindu rites and ceremonies is not permissible between a Christian and a Hindu; that a marriage between the Hindu and a Christian is possible only under either the Christian Marriage Act or under the Special Marriage Act; that no such marriage took place between the plaintiff and the defendant under the above said Acts; that inasmuch as the defendant is not a

Hindu and the marriage ceremony was conducted in accordance with Hindu Law, the marriage between the plaintiff and the defendant is illegal and void and therefore there is no valid marriage between the plaintiff and the defendant; that a marriage between a Hindu and a Christian cannot be celebrated under the Hindu Marriage Act and hence the marriage creates no obligation between the parties and there cannot be a relationship of husband and wife in law between the plaintiff and the defendant.

4. The defendant filed a written statement thereby denying all the allegations of the plaint and further submitting that she is a born Hindu and is professing Hindu religion all along; that she studied in the C.S.I.School, Mangarai and so the school authorities had mistakenly entered her religion in the school records as C.S.I. Christian; that no fraudulent representation was made to the plaintiff as alleged in the plaint; that as both the parties are Hindus, the Hindu Marriage Act will apply to their marriage and not either the Special Marriage Act or the Christian Marriage Act; that the plaintiff and defendant lived as husband and wife and a male child by name Arun was born to them on 28.8.1983 and the plaintiff is bound to maintain the defendant and the child. On such averments, the defendant would pray to dismiss the suit with costs.

5. On such pleadings by parties, the trial Court would frame the following issues for determination:

1.Whether the defendant is a Hindu, as stated in her written statement?
2.Whether the marriage solemnised in between the parties is not valid under law since the same was not conducted properly but on misrepresentation?
3.Whether the plaintiff is entitled to the reliefs sought for in the suit?
4.What relief, is the plaintiff entitled to?

Thereafter, the trial Court would conduct the trial wherein the plaintiff besides examining himself as P.W.1 for oral evidence would also mark 11 documents for documentary evidence as Exs.A.1 to A.11, Ex.A.1 dated 10.11.1962 is the Secondary School Leaving Certificate of the plaintiff; Ex.A.2 dated 20.11.1979 is the community certificate of the plaintiff, Ex.A.3 is the death certificate of the father of the plaintiff; Ex.A.4 is the xerox copy of the application of the defendant dated 20.3.1984 for the post of Junior Assistant; Ex.A.5 is the xerox copy of the secondary school leaving certificate of the defendant dated 12.3.1972; Ex.A.6 is the xerox copy of the community certificate of the defendant dated 21.2.1984; Ex.A.7 dated 21.11.1984 is the legal notice issued by the plaintiff through his counsel to the defendant; Ex.A.8 is the original of Ex.A.6; Ex.A.9 is the original of Ex.A.5; Ex.A.10 is the letter dated 2.4.1984 addressed by the defendant to the plaintiff and Ex.A.11 is the original of Ex.A.4.

6. On the other hand, on behalf of the defendant, the defendant besides examining herself as D.W.1 would also examine one Alangamani as D.W.2 for oral evidence and would mark seven documents as Exs.B.1 to B.7 for documentary evidence. Ex.B.1 is the invitation card for the marriage of the parties; Ex.B.2 dated 24.2.1985 is the certificate issued by the Church Worker of the Kamplar Church, Mangarai; Ex.B.3 dated 18.1.1985 is the

certificate issued by the Secretary of Vishva Hindu Parishad, Nagercoil; Ex.B.4 is the invitation card dated 18.2.1986 for the celebrations of `Sivarathri' festival at the `Sankara Nainar Kulathu Magathevar koil' wherein it is mentioned that the father of the defendant would be presenting the presentations; Ex.B.5 is the community certificate of the defendant issued by the Head Quarters Deputys Tahsildar, Agasteeswaram; Ex.B.6 dated 14.5.1984 is the letter addressed by the plaintiff to the defendant and Ex.B.7 is the copy of the reply notice got issued by the defendant to the plaintiff.

7. The trial Court, in appreciation of the entire evidence placed on record and upon hearing the learned counsel for both and having regard to the judgment of the Karnataka High Court delivered in THIHMAKKU AND OTHERS vs. BANDLU RANGAPPA AND OTHERS reported in AIR 1977 Karnataka 115 wherein it has been held that `in the absence of the examination of and testimony by some witness competent to speak to matters either as to the knowledge of the relationship or as to the source of the information or statements on which the said recitals came to be incorporated in the said documents, the recitals, in themselves, cannot be treated as substantive evidence and as admissible on the question concerning paternity purportedly indicated in the said documents as such entries are matters extraneous to what is strictly enjoined upon the officer to record', would ultimately dismiss the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No.57 of 1990 before the Court of District Judge, Kanyakumari and the said Court also having traced the pleadings of parties and upon appreciating the entire evidence placed on record, would ultimately dismiss the appeal preferred by the plaintiff, thereby confirming the judgment and decree of the trial Court.

8. It is only aggrieved against the said concurrent judgments of both the Courts below, the plaintiff has come forward to prefer the above second appeal on certain grounds as brought forth in the grounds of appeal and this Court admitted the same for determination of the following substantial questions of law:

1. Whether the marriage between the plaintiff and the defendant is void in law as contended by the plaintiff?
2.Whether the rejection of Exs.A.4 to A.6 by the Courts below is legal and the reliance on Exs.B.3 and B.4 is legal?
3.Whether the plaintiff is estopped from disputing the validity of the marriage?

9. During arguments, the learned counsel appearing on behalf of the appellant, besides arguing on facts pleaded and projected before the Court of appeal and thereafter before the first appellate Court, would mostly dwell in law citing very many decisions rendered by the upper forums at different points of time. Pointing out that the marriage held in between the appellant and the respondent on 29.10.1982 was a void marriage, the learned

counsel would cite a judgment of the Honourable Apex Court rendered in SMT.YAMUNABAI ANANTRAO ADHAV VS. ANANTRAO SHIVRAM ADHAV AND ANOTHER reported in AIR 1988 SC 644. It is a case filed by the second wife against her husband, who married her when his marriage with his first wife was subsisting, claiming maintenance and the Honourable Apex Court, while considering the point ` whether a Hindu woman who is married after coming into force of the Hindu Marriage Act, 1955 to a Hindu male having a living lawfully wedded wife can maintain an application for maintenance under Section 125 of the Code of Criminal Procedure, 1973' has held:

"…. The marriages covered by S.11 are void ipso jure, that is, void from the very inception and have to be ignored as not existing in law at all if and when such a question arises. Although the section permits a formal declaration to be made on the presentation of a petition, it is not essential to obtain in advance such a formal declaration from a court in a proceeding specifically commenced for the purpose. The provisions of S.16 also throw light on this aspect. S.16(3) prominently brings out the basic difference in the character of void and voidable marriages as covered respectively by Ss.11 and 12. It is also to be seen that while the legislature has considered it advisable to uphold the legitimacy of the paternity of a child born out of a void marriage, it has not extended a similar protection in respect of the mother of the child."

It has been further observed:

"Lastly it was urged that the appellant was not informed about the respondent's marriage with Lilabai when she married the respondent who treated her as his wife, and, therefore, her prayer for maintenance should be allowed. There is no merit in this point either. The appellant cannot rely on the principle of estoppel so as to defeat the provisions of the Act. So far as the respondent treating her as his wife is concerned, it is again of no avail as the issue has to be settled under the law. It is the intention of the legislature which is relevant and not the attitude of the party."

10. The next judgment cited by the learned counsel for the appellant is one rendered by a Division Bench of the Calcutta in Sm.SWAPNA MUKHERJEE VS. BASANTA RANJAN MUKHERJEE AND OTHERS reported in AIR 1955 Calcutta 533 wherein it has been held:

"In order that a person may be convicted of an offence of bigamy, under S.494, the second marriage must be a form of marriage recognised by law, otherwise it would be simply an adulterous union and it will not be hit by the provisions of S.494. Where A, a born Christian and having a Christian wife living, marries once again a Hindu woman, the marriage being celebrated according to Hindu rites, the subsequent marriage between A and the Hindu woman is a void

marriage not because of the existence of the Christian wife of A but because of the fact that there cannot be a valid form of marriage between an Indian Christian and a Hindu woman celebrated according to Hindu rites…."

11. The next judgment cited by the learned counsel for the appellant is one rendered by a single Judge of Delhi High Court in VILAYAT RAJ vs. SMT.SUNILA reported in AIR 1983 Delhi 351 wherein while considering the point `whether an apostate of Hinduism can file a petition under the Hindu Marriage Act, 1955 seeking dissolution of a marriage solemnized under that Act, prior to his change of faith', and discussing Sections 3 to 5 of the Hindu Marriage Act, the learned Judge has held:

"For, there is no doubt, that a Hindu can marry a person who was earlier a Christian provided that person has been converted to the Hindu religion prior to the marriage, for on the date of the marriage both the parties are Hindus. A Hindu includes one who is converted or reconverted to the Hindu religion. So, if the other conditions are satisfied such a marriage would be a valid Hindu marriage."

12. The next judgment cited by the learned counsel for the appellant is delivered by a Full Bench of this Court in G.PACKIA RAJ vs. P. SUBBAMMAL ALIAS SUSILA BAI reported in AIR 1991 Madras 319. It is a matter wherein the husband filed a petition under Section 10 of the Indian Divorce Act against the wife and her paramour for dissolution of their marriage on ground of adultery and it has been held that `the marriage between a Hindu and a Christian solemnised in "seerthirutha" form is not valid under Section 7A of the Hindu Marriage Act."

13. The learned counsel for the appellant would also cite the judgment of the Honourable Apex Court rendered in ANANDJI HARIDAS & CO. PVT.LTD. vs. ENGINEERING MAZDOOR SANGH AND ANOTHER reported in AIR 1975 SC 946 wherein it has been held:
"As a general principle of interpretation, where the words of a statute are plain, precise and unambiguous, the intention of the Legislature is tobe gathered from the language of the staute itself and no external evidence such as Parliamentary Debates, Reports of the Committees of the Legislature or even the statement made by the Minister on the introduction of a measure or by the framers of the Act is admissible to construe those words. It is only where a statute is not exhaustive or where its language is ambiguous, uncertain, clouded or susceptible of more than one meaning or shades of meaning, that external evidence as to the evils, if any, which the statute was intended to remedy, or of the circumstances which led to the passing of the statute may be looked into for the purpose of ascertaining the object which the Legislature had in view in using the words in question."

14. The next judgment cited by the learned counsel for the appellant is one delivered by a learned single Judge of Kerala High Court in VISHNU MAHESWARAN NAMPOOTHIRI vs. KURUVILLA KOCHITTY KURIVILA AND OTHERS reported in AIR 1957 Kerala 103 wherein it has been held:
"The Education Code enjoins upon the Headmasterof each school to prepare and maintain an admission register of the pupils admitted to that particular school. Of the several particulars to be entered in such a register the date of birth of the pupil as stated by the parent or guardian is an important item. Thus there can be no doubt that the admission register is a public record maintained by the head of the institution who is in duty bound to

maintain such a register containing certain particulars relating to each pupil as required by the Education Code. In making such entries in the admission register, the head of the institution who is a public servant is merely discharging his official duty. The date of birth as entered in such an official record is a relevant fact as contemplated by S.35 of the Evidence Act and the same can be proved by production of that record. The entry thus made in such an official record by a public servant in the discharge of his official duty, has to be presumed tobe correct in the absence of other reliable evidence to the contrary."

15. The learned counsel for the appellant would further rely on a judgment delivered by a Division Bench of this Court in S.P.SAKTHI DEVI VS. THE COLLECTOR OF SALEM AND OTHERS reported in 1984 Writ.L.R.535 wherein it has been held:
"What is paramount is to find out whether in the course of discharge of public duties, the concerned public authority is enjoined to discharge the public duty, and if so, then the document which comes into existence consequent to such public duties, issued with seal and authority of his office would be a public document. Once a caste certificate comes into existence in this form any other public functionary is duty bound to act upon the same. On being issued, it is a lawful and valid document. So long as it is not cancelled in the eye of law, it being a valid document, the holder of it, could rely upon it to establish his case."

16. The learned counsel for the appellant would further rely on a judgment delivered by a learned single Judge of this Court in M. RAMAMURTHY vs. STATE OF TAMIL NADU, REPRESENTED BY SECRETARY, REVENUE DEPARTMENT AND TWO OTHERS reported in 1998 (III) CTC 638 wherein the judgment reported in 1984 Writ L.R.535 (extracted supra) has been followed.

17. The last judgment cited by the learned counsel for the appellant is one delivered by the Division Bench of this Court in N.S. ZIAUDEEN vs. S.ASHOK KUMAR, PRINCIPAL SESSIONS JUDGE, CHENNAI AND OTHERS reported in (2002) 2 M.L.J.74 wherein when a petition to issue a Quo warranto against a Judicial Officer in the rank of a District Judge has been filed on ground that he falsely claimed the status of a Scheduled Caste though he is following Christian faith and the said judicial officer claimed that he reconverted to Hinduism, the Division Bench has held:
"So long as the social status of the first respondent, as depicted by the caste certificate issued by the authorities, stands, there is a statutory presumption under Section 114 of Indian Evidence Act that the first respondent is a Scheduled Caste and he cannot be called a usurper of the office."

18. Besides the above judgments, the learned counsel would also rely on Sections 35,61,62,63 and 74 of the Evidence Act wherein the relevancy of entry effected in public record made in performance of an official duty, the proof of the contents of documents either by primary or secondary evidence and the nature of the public document have been narrated.

19. In reply, the learned counsel appearing on behalf of the respondent would also bring out the facts and circumstances of the case in

hand in his own way as projected in defence to the case put up by the appellant herein before the trial Court and would assert that factually there is no case for the appellant since the very foundation on which the case has been made out for the relief sought for is untenable and false.

20. The learned counsel for the respondent would exhort that to suit the convenience of the appellant, he has changed his colour after having lived a long married life with the respondent for no proper reason assigned but clinging to the technical point of a religion in order to leave the respondent in lurch. The learned counsel would also point out that the Courts below have not only in consideration of the facts pleaded but also taking into account the position of law pertaining to the same have arrived at a valid decision and there is no reason for this Court to interfere with the concurrent decisions arrived at legally by the lower Courts and would pray to dismiss the above second appeal with costs.

21. In consideration of the facts, circumstances, position of law, the materials placed on record and the arguments of the learned counsel for both and in application of all these to the substantial questions of law framed, what comes to be seen is that it is the marriage held in between the appellant and the respondent on 29.10.1982 which is to be found whether valid or void. On the part of the appellant, the only point that is relied on for seeking the relief of declaration is to the effect that the appellant and respondent are not husband and wife and that the marriage was not held in accordance with the law prevalent on the subject. The contention of the appellant is that he is a born Hindu professing and practising Hindu religion, but the respondent making a misrepresentation to the effect that she was also a Hindu in spite of being a Christian as the school records go to show, has married him following the Hindu rituals and ceremonies and unless the marriage has been held in accordance with the provisions of the Special Marriages Act, since being an inter-religious marriage, the said marriage performed in between the appellant and the respondent as on 29.10.1982 is a void marriage and hence seeks to declare the same as such.

22. So far as the judgments cited in support of the case of the appellant are concerned, in the first judgment reported in AIR 1988 SC 6 44, it is an admitted case of the wife that she was the second wife when already the husband had married another lady when the first wife was living and the first marriage was in subsistence and therefore in a case of maintenance launched by the second wife, since the marriage by the second wife was not a valid one, the Honourable Apex Court refused to grant the relief of maintenance as sought for by the second wife. But, in the case in hand, the wife does not admit the claim of the husband that she was either a Christian or that she had been given in marriage to the appellant on misrepresentation that she was a Hindu and hence factually a decision had to be arrived at in the suit filed by the husband seeking declaration that the marriage was void. Weighing the evidence placed on record, the trial Court has arrived at the conclusion that neither she was a Chris tian nor had there been any misrepresentation made on the part of the wife. Therefore, the principles held by the Honourable Apex Court in the above case cited by the appellant cannot be applied to the case in hand.

23. The second judgment cited on the part of the appellant reported in AIR 1955 Calcutta 533 is a case decided almost 50 years back on a charge of bigamy under Section 494 of the IPC which is a criminal charge wherein also it is an admitted fact that a born Christian male having a Christian wife living, has married another Hindu woman in accordance with the Hindu rites and the Calcutta High Court held that the marriage was void insofar as it had been conducted between an Indian Christian and a Hindu woman. The findings on the facts of this case cannot also be applied to the case in hand since it is not the admitted fact that the wife is a Christian and a decision has to be taken on facts whether she was a Christian, for which, factually dealing with the case on a thorough trial, the Courts below have arrived at the conclusion that the wife was not a Christian and hence the principles laid in this case cannot also be applied to the case in hand.

24. The third case cited by the appellant reported in AIR 1983 Delhi 351 is also on an entirely different set of facts based on conversion which is not the case in hand and hence the principles laid down in this case also become inapplicable to the case in hand.

25. So far as the 4th case cited by the appellant reported in AIR 1 991 Madras 319 is concerned, it is pertaining to the marriage between a Hindu and a Christian solemnized in the form of `Seerthirutha Marriage' and the same was held to be not valid under Section 7A of the Hindu Marriage Act. Since the question whether the wife is a Christian itself is in dispute in the case in hand and on facts and materials made available, the decision has been arrived at by the Courts below in a valid manner that the wife is not a Christian, the decision arrived at in this case also cannot be applied to the case in hand.

26. The next case cited by the appellant reported in AIR 1975 SC 94 6 is regarding the interpretation of law and the language of the statute regarding the object and intent of legislation sought to be achieved and it has nothing to do with the factual position of the case in hand so as to derive any result in application of the same.

27. The sixth case cited reported in AIR 1957 Kerala 103 is regarding the entries effected in the school records pertaining to the date of birth of the pupil in the register maintained at the school as given by the appellant or guardian and since the same being an official record entered by a public servant in discharge of his official duty, it has to be presumed to be correct only in the absence of the other reliable evidence to the contrary. It is not the same fact or position regarding the case in hand wherein abundant reliable evidence has been placed on the part of the wife to the effect that she was not a Christian but a Hindu, which has been well appreciated and a valid decision has been arrived at by the Courts below and hence the principles derived in this case cannot also be applied to the case in hand.

28. All the other decisions are either following the same line as in the case of the above decisions cited or following the other decisions particularly rendered in cases wherein factually either it is

admitted or determined that the other spouse is belonging to a different religion. Whereas in the case in hand, the fundamental and basic duty of the trial Court in a suit of such nature is to find out whether really the allegation of the appellant that the respondent was a Christian is correct based on the facts and circumstances pleaded and proved in evidence and in the said exercise, the appellant/plaintiff has relied on Exs.A.4 to A.6 which are respectively the application for job, the first page of the SSLC and the caste certificate issued, as against which Exs.B.2 to B.5 have been projected by the respondent/ wife which are the certificates issued by the South Indian Diocess, the Certificate issued by the Viswa Hindu Parishad and the Hindu temple festival celebration notice and also the caste certificate dated 2 8.10.85 and tracing the facts and circumstances of the case as projected by the appellant and the respondent, the trial Court, having framed the issues, based on the facts and circumstances put forth, has permitted the parties to record their evidence conducting a thorough trial into the pleadings and appreciating the evidence placed on record in the manner required by law, has ultimately arrived at the valid conclusion to hold on facts and circumstances and in accordance with law to dismiss the suit filed by the appellant. The first appellate Court also in the same manner has validly arrived at the conclusion to hold that the appellant has no valid or proper case to offer and thus dismissed the appeal preferred by him as against the judgment and decree passed by the trial Court and since these decisions have been properly arrived at as it comes to be seen on a careful perusal of the materials made available particularly the oral and documentary evidence, this Court does not find any valid reason to cause its interference into the well considered and merited judgment and decree passed by the trial Court and the first appellate Court as well and therefore the only conclusion that could be arrived at on a overall consideration of the case, particularly falling in line with the substantial questions of law framed is to decide the same against the appellant and in favour of the respondent and hence the following judgment:

In result,
(i)there is no merit in the above second appeal and it deserves only to be dismissed and is dismissed accordingly with costs throughout.
(ii)The judgment and decree dated 27.6.1991 rendered in A.S.No.57 of s1990 by the Court of District Judge, Nagercoil thereby confirming the judgment and decree dated 29.10.1986 rendered in O.S.No.256 of 1985 by the Court of Principal District Munsif, Padmanabhapuram is hereby confirmed.

Index: Yes
Internet: Yes

Rao

To
1.The District Judge,
Nagercoil.

2.The Principal District Munsif,
Padmanabhapuram.